
CONTRACTING FOR PROFESSIONAL SERVICES



PURCHASING ASSISTANCE

Department of Local Affairs
1313 Sherman Street, Room 521
Denver, Colorado 80203
303-866-2156
www.dola.colorado.gov

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INTRODUCTION

Frequently government agencies require the specialized skills, knowledge, resources and services of private contractors or consultants to complete complex studies, to develop or revise procedures, to conduct audits or to provide a specialized product. Examples may include: management consulting services, feasibility studies, software programming, hiring of an architect, etc.

A contract for professional services or for specialized products, between a local government and a contractor, is an agreement containing the statement of work, a description of the goods and services to be delivered, the timetable, and responsibilities for the services to be provided.

For more information or for more DOLA technical assistance publications see the department's web site at www.dola.colorado.gov and click on Data, Information and Publications.

DEFINITIONS

The American Bar Association Model Procurement Code for State and Local Governments defines Services as meaning "the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance."

PROFESSIONAL SERVICES are unique, technical, and/or infrequent functions performed by independent contractors whose occupation is rendering of such services. While not limited to licentiates, the services are considered "professional", e.g. a full time entertainer, an auctioneer, etc. Contracts may run to partnerships, firms or corporations as well as individuals. Examples of professional services include medicine and the medical arts, management and systems consultation, research, the performing arts, etc.

PROCESS

The process for hiring architects, engineers and other professional services is typically not conducted through a formal bid process but rather through a Request For Proposal (RFP). This paper will attempt to clarify this process and explain why it is in the best interest of the local government to use this

purchasing method. Remember: this is the method preferred by most professional service providers. Many will not bid if any other method is used.

WHAT IS AN RFP?

A request for proposal (RFP) must be a clear, unambiguous statement of scope of work to be completed by a contractor. The statement of work should be as definitive as possible to enable the contractor to prepare a technical proposal sufficient to meet your needs. A clear statement of tasks involved will enable you to monitor the contractor's performance in completing the project.

TIME REQUIRED FOR COMPLETION OF RFP PROCESS

It typically takes from 60 to 90 days to complete the RFP process and to execute a contract. Many procurement rules allow a period of 30 days for interested readers to respond.

The purchasing office should solicit proposals from three or more qualified firms. Any contractor who desires to bid should be furnished with a copy of the RFP.

Proposals from all responding firms will be opened at the same time, at the date specified in the RFP, and such opening shall be in the presence of all interested parties at the location identified in the RFP.

The RFP proposal format should clearly state the scope of work and the responsibilities of the contractor. The criteria and methodology to be used in evaluating all the proposals and selecting a contractor must be included in the RFP. The products to be produced, and the schedule of all activities including the completion date to be met by the contractor, must be stated in the RFP.

The proposals received in response to the solicitation must be objectively evaluated by an impartial committee using criteria established prior to receipt of proposals. The criteria and the committee must be established prior to the official opening of the proposals.

FORMAL REQUESTS FOR PROPOSALS (RFP)

Formal RFP's are often required when requirements are estimated to exceed \$10,000. Formal RFP's must allow 30 days for a response. RFP's generally should be written within the following outline:

1. Background, Overview and Goals: A general explanation as to the need of the project, including a statement of how the scope of work will be incorporated into the local government's ongoing program. A statement must be included of the specific goals or results to be accomplished.

The local government may specify the dollar amount available for the project, but such an expression will usually result in all bidders bidding that amount. It is advisable to indicate the funds available only when the scope of work is so broad, or the work requirements so great, that most contractors would overbid the project if the information were not furnished. In that case, the agency is limiting the range of the project to within the limits of the available funds.

2. Administrative Information: Formal boiler plate information (sample attached) must be included in the RFP. This information includes the due date of the RFP, schedule of activities, how proposals will be accepted, material ownership, etc. The procedure for answering vendor inquiries and the pre-bid conference must be described.
3. Scope of Work in the RFP shall require a clear statement of the work tasks to be completed by the contractor, a list of deliverables to be furnished by the contractor, and a schedule of activities to be met by the contractor.
4. Evaluation Criteria. A general description must be provided of the criteria and methodology used in evaluating the proposals.
5. Vendor Response should include:
 - A detailed explanation of how the contractor is to respond to the bid request.
 - A statement as to the number of copies of the proposal required.
 - His/her proposed methodology to complete the project.
 - The personnel to be assigned.
 - The number of personnel and person hours to be supplied by the contractor.
 - The previous experience of the contractor in completing comparable projects.
 - A list of references.
 - A budget breakdown as to how costs were arrived at.
 - A firm total cost bid.

RFP CONSIDERATIONS PRIOR TO PREPARATION

The local government shall assign a project director to develop the RFP, who will be responsible for the project. The scope of work shall clearly define the responsibilities of the contractor; delineate specific tasks to be accomplished, and the final goals to be reached.

The local government shall determine and incorporate in the RFP such things as:

- Are personnel available to be assigned by the local government to work with the contractor?

- Are there existing local government facilities which may be used by the contractor?
- Will the contractor be responsible for printing of reports, or will the local government do that?
- If new research required, may existing data be utilized and analyzed?
- If new data is to be gathered, will the local government or the contractor furnished the sources of the data?
- Will travel and per diem charges be included in the total cost bid, or will travel and per diem be paid in addition?
- If a survey is to be taken, will the vendor develop the questionnaire, conduct the survey, correlate the data, make recommendations based on the survey, determine the population to be surveyed, etc.
- What are the local government's responsibilities; e.g., will the local government offer counsel to the contractor, arrange for needed interviews, provide clerical help, liaison personnel, computer time, programming aid, office space, copy service, telephone service, etc.?

Be quantitative! If training is to be provided by the contractor, specify how many people are to be trained, how often, where they are located, etc. If presentations are to be made, to what degree or specificity will they be made?

Specify the schedule of activities and the completion date of the project. An expeditious completion date may require a contractor to assign more people to the project to meet the schedule. It also may cost more dollars.

A contract can only be monitored and enforced to the degree that the local government has defined the responsibilities of the contractor.

Many conflicts may be avoided up front by carefully defining the work tasks to be completed by the contractor. With reporting requirements, scheduled, and tasks clearly specified, the local government can easily monitor the contractor's performance.

VENDOR INQUIRIES

The project director should anticipate questions that might be raised by contractors planning to respond to the RFP. There are three methods that may be used by the local government to respond to vendor inquiries.

1. Establish a date for a vendor conference approximately ten days after the proposals have been mailed. This schedule will allow potential bidders an opportunity to review the proposal and develop valid questions that they can present at the vendor conference. All questions and answers raised at the conference should be responded to at the conference and with a written addendum to the RFP, listing the questions and answers, mailed to

all contractors on the original mailing list. The written addendum may be waived if attendance at the bidder's conference is mandatory.

2. A formal date may be established for receipt of written inquiries. After that cut-off date, no additional inquiries should be accepted. An addendum is then developed, giving the questions and the answers. This addendum is mailed to all contractors on the mailing list. The source of the inquiries should not be identified. Contractors should be advised in the RFP to identify on the envelope that transmits their questions the notation "Inquiry to RFP #_____."
3. If an agency anticipated no vendor inquiries, the RFP may be mailed out with the purchasing office shown as the vendor contact. If questions are then raised which are determined to be of general concern, an addendum can be prepared and mailed out to all contractors on the mailing list. Such a procedure frequently forces the extension of the RFP opening date to advise all prospective bidders of new information.

It is mandatory that all prospective bidders have the same information to respond to the solicitation. Do not provide verbal responses to questions that can affect a contractor's response to the RFP.

It is important that only the appropriate purchasing office receive and respond to vendor inquiries, or be the contact point for all prospective contractors prior to the opening of the proposals.

COST

Cost must always be a consideration in the award of any contract and must be shown as one of the evaluation criteria for analyzing the proposals received. The cost must be a total cost and not an estimate. Estimates cannot be considered. Proposals with an estimate cost figure should be rejected.

The contractors should be advised of what is to be included in the total cost. The total cost should include all personnel time, equipment, supplies, overhead expense and profit. All contractors must submit a budget assigning costs for personnel, supplies, etc., within their total cost bid. This should be considered for projects of \$10,000 or more. The budget gives the local government a basis of comparison to determine if the contractor has assigned reasonable dollar to the budget items.

If travel and per diem expenses are involved in the project, the RFP should specify whether these cost are to be included in the cost or if they will be reimbursed to the contractor over and above the price quoted. Establish this prior to the bid for per diem rates and travel rates.

EVALUATION CRITERIA

As the project director develops the scope of work, he/she should consider developing the criteria to be used in evaluating the proposals received. A general description of the evaluation criteria must be included in the RFP.

Prior to issuing the RFP, the project director must prepare the specific evaluation factor that will be used to evaluate the RFP's and he/she should establish the weighting factors to be assigned for each criterion. The weighting factors should not be included in the RFP proposal itself. They must be established and furnished separately to the appropriate purchasing office prior to the RFP opening. The evaluation criteria, weighting factor, and completed evaluation report must be made available to all interested parties after announcement of the contractor selected,

The project director should establish a minimum passing score or point value. This score or point value would be the minimum acceptable level for a proposal to be accepted by the evaluation committee as technically able to fulfill the scope of work.

Cost should not normally be assigned a numeric value. The weighted evaluation criteria or score is compared to the price by dividing each prospective contractor's cost by his evaluation score. The resulting lowest cost-value determines which prospective contractor should be recommended to the purchasing office for the award.

By comparing technical value to cost, with a minimum technical score established, technically superior proposals with moderately higher cost will generally rank better than lower cost proposals with a much lower technical score. In this manner, the agency can avoid selecting a low-bid proposal that is technically inadequate. Also, the agency is able to weigh intangibles such as prior experience, methodology of contractor, etc., for consideration in awarding the contract.

EVALUATION COMMITTEE

Prior to opening the proposals, the project director will establish the evaluation committee. The committee must be composed of knowledgeable personnel representing the entity that will use it. Representatives from other entities may also be utilized based on their qualifications. The evaluation committee members shall be unbiased, will be instructed to follow meticulously the evaluation format established, and must be able to objectively evaluate all proposals received. Conflicts of interest shall not exist. The purchasing office may reserve the right to include a representative on the evaluation committee.

Using an evaluation form showing the evaluation criteria and the weighting factors, the committee members shall independently evaluate each proposal. At a subsequent evaluation committee meeting, the members may express their

opinions as to the pros and cons of the proposals received. Scores are then adjusted at this point, based on the committee's discussion. Scores are then collected, averaged, and a consensus technical score assigned to each proposal. This technical score is then divided into the contractor's total cost bid to arrive at a cost-value.

The names of the evaluation committee members shall not be revealed until final contractor selection.

Some examples of general evaluation criteria which may be used and which may be state in the RFP are:

- Methodology and approach to the project
- Number and status of personnel assigned
- Prior experience of firm and/or personnel assigned
- Contractor's proposed schedule to complete project

Within the general criteria the project director will assign specific work tasks, schedules, etc., with appropriate weighting factors.

SUBCONTRACTING

Contractors shall be advised that planned use of subcontractors must be clearly explained. It is advisable not to allow subcontracting for more than 30 percent of the total scope of work, since it then becomes debatable as to which contractor has responsibility for the project.

Contractors shall be notified that in the event a portion of the work is subcontracted, the prime contractor will be totally responsible for the subcontracted portion of the work. The local government's only contact for contract performance is the prime contractor.

CANCELLATION OF CONTRACT

If cancellation of the contract is being considered, the appropriate purchasing office shall be contacted before the contractor is advised. A cancellation clause shall be included in the RFP and in the contract. Potential reasons for cancellation should be stated, for example: failure to meet schedules, poor performance, etc. Prior to contract cancellation, written notice must be given to the contractor advising him/her of reasons for the proposed cancellation, procedures to correct problems, if any, and date contract will be cancelled. Due process must be allowed prior to cancellation of the contract. In the event of contract cancellation, the agency should only reimburse the contractor for acceptable work or deliverables received to date.

WHAT HAPPENS IF:

1. No proposals are received? The project director and the appropriate purchasing official should review the specifications and determine if the work tasks, schedules, funds available, etc. are reasonable. If they are, the purchasing office will contact some of the firms solicited to determine reasons for their failure to respond. Perhaps the RFP will have to be modified to correct the problems and the RFP sent out for rebid.
2. Only one response is received. If competitive bids have been sought out from firms, qualified in the type of work specified and only one response is received, the agency should evaluate the proposal received using the evaluation format previously established. If the proposal satisfies the agency's requirements, it is within available funds, etc. the Purchasing Office may award a contract.
 - In such an event, it is important a local government fully document the proposal, the list of contractors solicited, etc.
3. Contractor Protest Of An Award. After notification of selection of a contractor, if an unsuccessful contractor protests the award, the project director should ask the unsuccessful contractor to provide a written statement outlining in detail all the elements of his/her protest. Any such protest must be transmitted to the delegated purchasing agency within seven (7) days of when the protester knows or should have known how he/she was aggrieved. Methods for protesting should be clearly defined in a local government's procurement code.
4. If all proposals received are judged inadequate, the project director, in concert with the purchasing agency, should review the RFP to see if the scope of work, the schedules, the funds, etc., are reasonable. If they determine yes, then the RFP should be re-solicited.

SOLE SOURCE JUSTIFICATION

There are times or situations when only one vendor exists that can successfully complete a particular project. Prior to drafting a contract, the agency desiring a sole source Professional Services Contract shall submit a letter justifying that decision to the purchasing section. The sole source justification is required regardless of the dollar amount. The appropriate local official must sign any such justification. Sole source approval shall be received prior to the drafting of any contract or initiation of any negotiations with the proposed contractor.

Such justification may be accepted or rejected by the appropriate purchasing office. If any doubt exists in regard to the unavailability of competition, the sole source justification will be rejected and the RFP process will be required.

RFP PROCESS (SUMMARY)

1. Project director develops scope of work, evaluation criteria, time schedule, evaluation team, and assigns bid due date. Approval is required by purchasing section.
2. Proposals are prepared by the agency and mailed by purchasing to qualified and/or interested contractors.
3. Vendor inquiries, if any, are responded to in an addendum.
4. Sealed proposals are received and opened at the time, date, and place specified.
5. Using previously established evaluation criteria and methodology, a contractor is recommended to the appropriate purchasing office.
6. The successful vendor and the unsuccessful bidders are notified of the contractor selected by the appropriate purchasing office.
7. Debriefing is held with unsuccessful bidders, if requested, using evaluation criteria, committee report, etc.
8. Successful contractor and agency develop a contract limited to the scope of work defined in the RFP.
9. Contract is routed to the appropriate agency for their approval signatures.
10. The contract/contractor is monitored by the agency.

The contract must be completely signed and approved prior to the contractor being authorized to commence work. Any work by the contractor, prior to final contract approval, is at his/her risk and the local government is not liable for payment.